

REQUEST FOR PROPOSALS
ISSUED BY
THE CITY OF EL PASO
PURCHASING & STRATEGIC SOURCING DEPARTMENT

SOLICITATION NO: 2016-371R

DATE ISSUED: OCTOBER 21, 2015

TITLE: DEVELOPMENT OPPORTUNITY FOR A PUBLIC PRIVATE PARTNERSHIP FOR A MIXED-USE URBAN DEVELOPMENT, INCLUDING STRUCTURED PARKING AT MILLS AVENUE AND CAMPBELL IN DOWNTOWN EL PASO

ECONOMIC DEVELOPMENT

An original, signed, sealed, OFFER to furnish the goods and/or services set forth below will be received at the place indicated below, until:
12:00 PM MST, local time, FRIDAY, JANUARY 22, 2016

NOTICE When used in Request for Proposals, the terms 'Offer' and 'Proposal' and 'Offeror' and 'Vendor' are interchangeable.

ADDRESS OFFERS TO:
DIRECTOR
PURCHASING & STRATEGIC SOURCING DEPARTMENT
CITY OF EL PASO

MAIL TO:

CITY OF EL PASO OR
PURCHASING & STRATEGIC SOURCING DEPARTMENT
300 N. CAMPBELL, 1ST FLOOR
EL PASO, TX 79901-1153

HAND DELIVER TO:

CITY OF EL PASO
PURCHASING, 1ST FLOOR
300 N. CAMPBELL
EL PASO, TX 79901

FOR ADDITIONAL INFORMATION CONCERNING THIS SOLICITATION, CONTACT:
HAYDEE PEÑA, PURCHASING AGENT
Telephone: [915] 212-1184 FAX: [915] 212-0044 Email: penah@elpasotexas.gov

EXPIRATION OF OFFERS

The Offeror agrees, to furnish all items [supplies or services] at the prices offered, and delivered at the designated point or points, within the time set forth below, if this offer is accepted within ONE HUNDRED TWENTY [120] consecutive days from the date set for the receipt of offers. All offers shall expire on the 120th day after the offers are open unless the City of El Paso requests an extension of the offers in writing and the offeror agrees to extend in writing.

AMENDMENTS TO SOLICITATION

Receipt of all numbered amendments to Solicitations must be acknowledged:

| <u>AMENDMENT</u> | <u>DATED</u> | <u>AMENDMENT</u> | <u>DATED</u> | <u>AMENDMENT</u> | <u>DATED</u> | <u>AMENDMENT</u> | <u>DATED</u> |
|------------------|--------------|------------------|--------------|------------------|--------------|------------------|--------------|
| A001 | _____ | A002 | _____ | A003 | _____ | A004 | _____ |
| A005 | _____ | A006 | _____ | A007 | _____ | A008 | _____ |

OFFER SUBMITTED BY

COMPANY NAME AS IT APPEARS ON ORGANIZATION CERTIFICATE ISSUED BY STATE IN WHICH COMPANY WAS ORGANIZED)

STREET ADDRESS

P.O. BOX NUMBER

CITY, STATE AND ZIP CODE

TELEPHONE NUMBER & FAX NUMBER - HIRE EL PASO 1ST LOCAL VENDOR REGISTRATION ID# _____

E-Mail address

PLEASE CHECK PREFERRED ADDRESS FOR RECEIVING SOLICITATION DOCUMENTS.

OFFER EXECUTED BY [PLEASE PRINT]

NAME AND TITLE OF PERSON AUTHORIZED TO OBLIGATE COMPANY

SIGNATURE AND DATE OF OFFER

WITHOUT AN ORIGINAL SIGNATURE ON THIS OR OTHER DOCUMENT BINDING THE OFFEROR, THE OFFER WILL BE REJECTED

NOTE: AWARD OF THE CONTRACT RESULTING FROM THIS SOLICITATION WILL BE MADE TO THE SUCCESSFUL OFFEROR BY AN AUTHORIZED WRITTEN NOTICE, WHICH MAY BE IN THE FORM OF A LETTER NOTICE OF AWARD OR A PURCHASE ORDER ISSUED BY THE CITY OF EL PASO. THIS IS A ONE TIME CONTRACT ☐

CITY OF EL PASO, TEXAS

RFP: 2016-371R

REQUEST FOR PROPOSALS FOR A DEVELOPMENT OPPORTUNITY

FOR

A PUBLIC PRIVATE PARTNERSHIP

FOR

**A MIXED-USE URBAN DEVELOPMENT, INCLUDING STRUCTURED PARKING
AT MILLS AVENUE AND CAMPBELL STREET IN DOWNTOWN EL PASO**

DUE DATE: JANUARY 22, 2016

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PART 1 – GENERAL INFORMATION

1.1 Background Information

The City reserves the right, and may at its sole discretion exercise the following rights and options with respect to this RFP: to waive or modify any irregularities in proposals; to request additional information; to reject any and all responses; to issue subsequent solicitations for proposals and/or amendments to this solicitation; to conduct investigations with respect to the proposals of each respondent; to modify dates; and to exercise its judgment with respect to any aspect of this RFP, the evaluation of the responses, and the negotiation and award of any contract.

Preliminary studies and information on the mixed-use urban development are available on the City's website:

- 2011 DMD Downtown Statistical Report: <http://downtownelpaso.com/wp-content/uploads/2011/12/DMD-Census-Demo-Study-2011-Final.pdf>
- TIRZ Maps and Information: <http://gis.elpasotexas.gov/tirz/index.html>
- Apartment Market Report: <https://www.elpasotexas.gov/~media/files/coep/economic%20development/1q15%20el%20paso%20report-mf.ashx?la=en>

OVERVIEW

The City of El Paso (the “City”) approved Public Private Partnership Guidelines on July 17, 2012 (the “Policy”) in order to work cooperatively with private entities to encourage intensive, high quality development of municipal facilities, including underutilized real estate assets owned by the City. The City has found that there is a public need for timely acquisition, design, and construction of a municipal parking garage and a desire for additional mixed-use space (hotel, residential, and/or commercial) in the downtown area.

The City finds that the municipal property located in downtown El Paso, directly across the street from City Hall (at the intersection of Mills Avenue and Campbell Street) (the “Site”) is currently underutilized and desires a mixed-use urban development that includes structured parking as a better use for this location.

PROJECT

THE SITE: The Site is approximately 67,600 square feet (1.55 acres). It is currently used for surface parking with no improvements. The full block is available for redevelopment. The Site is zoned C5 and C5c. Rezoning may be available by mutual agreement to suit a specific development program. The Site is located in El Paso's Downtown Tax Increment Reinvestment Zone.

DEVELOPMENT OPPORTUNITIES: The City is seeking a development partner for the full downtown block of Campbell Street from Mills Avenue to Main Street. In exchange for a ground lease of the Site and other potential incentives, the City requires 500 to 700 parking spaces for municipal use. Parking required for the private portion of the development should be included in addition to the City required spaces.

Development opportunities for the Site include, but are not limited to: residential units (for sale or rent), hotel project, ground floor retail, and/or restaurant(s). The City desires a high density project with an urban format that is architecturally significant and unique.

1.2 Solicitation Purpose

The City of El Paso (the "City") issues this Request for Proposals for a Development Opportunity for a DEVELOPMENT OPPORTUNITY FOR A PUBLIC PRIVATE PARTNERSHIP FOR A MIXED-USE URBAN DEVELOPMENT, INCLUDING STRUCTURED PARKING AT MILLS AVENUE AND CAMPBELL IN DOWNTOWN EL PASO, including structured parking (the "Project").

PART 2 - NOTICES TO PROPOSERS

2.1 Public Disclosure Proposal Information

Offerors are cautioned that once a bid is opened, all information contained therein will be available to the **PUBLIC** unless the information is excepted from the requirements of Government Code Section 552.021 pertaining to Open Records.

The exception that allows the City to protect information that, if released, would give advantage to a competitor or bidder does not apply after the bidding is complete and the contract has been awarded. *Trade secrets, commercial or financial background data and privileged or confidential information* may be excepted from public inspection. If any information contained in your offer qualifies for an exception because it falls into one of the categories above it should be clearly marked "CONFIDENTIAL" and the basis of your claim of confidentiality should be stated. Data so identified will be maintained as a protected record. Offerors who claim that information contained in a bid should be protected from public disclosure after the award of the contract may be asked to support such claim if the City receives an Open Records request for the information and requests a determination by the Attorney General. [Rev. 04-03-98]

2.2 Bid Net Notification

NOTE: ANY CHANGES IN DUE DATE OR MATERIAL CHANGES FOR ANY RFP'S/SOLICITATIONS WILL BE POSTED ON THE SOLICITATIONS PAGE OF THE CITY OF EL PASO PURCHASING DEPARTMENT'S WEBSITE: <http://legacy.elpasotexas.gov/purchasing/ep-invitations.asp>

It is the bidder's responsibility to ensure that they have all pertinent information regarding solicitations, including all amendments prior to submitting their offer. Please check the website, even after submitting a bid, to ensure that you have all amendments as they may be posted at any time, up to and including the day of bid opening.

Recommendation(s) for formal awards shall be posted on the City's website the Thursday afternoons prior to the Tuesday City Council Meeting wherein the recommendation shall be presented. Vendors are responsible for monitoring the City's website for said postings.

2.3 Communications

2.3.1 Cone of Silence/Anti Lobbying Policy

Under the Policy, the issuance of this RFP trigger's the City's "cone of silence period". The cone of silence period prohibits any communication or lobbying activities, from the date of the issuance of the RFP until the day that a recommendation of a contract award is placed on the City Council agenda, with regard to the RFP or the Project between any person, including, but not limited to, bidders, lobbyists, or consultants of bidders, service

providers or potential offerors, proposers, or vendors and any of the following: (1) City staff and City consultants, including any employee of the City or person retained by the City as a consultant on the Project, or any person having participated in the development, design, review of documents related to the Project; (2) City officials, including the Mayor, Council Representatives, or their respective staff members; and (3) Members of the City's Selection Committee, whether City employees or outside experts.

2.3.2 Wage Theft – The City of El Paso Code – Chapter 3.46

3.46.010 Definition

1. ***Wage Theft Adjudication*** occurs when:

Employer is criminally convicted as an employer pursuant to Section 61.019 of the Texas Labor Code for failure to pay wages; or

Injunctive relief is granted in district court under Section 61.020 of the Texas Labor Code against the employer for repeated failures to pay wages as required by Chapter 61 of the Texas Labor Code; or

A wage payment determination order becomes final under Section 61.055 or Section 61.060 of the Texas Labor Code; or

The Texas Workforce Commission assesses an administrative penalty under Section 61.053 of the Texas Labor Code against the employer for acting in bad faith in not paying wages as required by Chapter 61 of the Texas Labor Code; or

Employer is convicted for Theft of Service under Section 31.04 of the Texas Penal Code; or

Court of competent jurisdiction finds that an employer engaged in wage theft.

2. ***Employee*** and ***employer*** have the meanings by Texas Labor Code, Section 61.001.
3. ***Wages*** means compensation owed by an employer for labor or services rendered by an employee, whether computed on a time, task piece, commission or other basis.
4. ***Wage Enforcement Coordinator*** shall mean the person designated by the City Manager to receive and investigate claims of wage theft and to create, maintain a Wage Theft database.
5. ***Wage Theft Complaint*** means a written complaint filed with the Wage Theft Coordinator alleging any instance of wage theft by an employer.

Section 3.46.020 WAGE THEFT COORDINATOR

- A. Appointment.** The City Manager shall designate a Wage Theft Coordinator to perform the duties identified in this Section.
- B. Duties.** The Wage Theft Coordinator shall:
1. Wage Theft Adjudication Database- the Wage Theft Coordinator shall create and maintain a database of employers located or operating within the City of El Paso who have a Wage Theft Adjudication record. The Wage Theft Database will be created on a “complaint basis” and populated with information provided by third parties. The Wage Theft Coordinator shall be under no obligation to investigate wage theft or to prosecute complaints.
 2. Substantiate whether a proposed party to a City Contract has a Wage Theft Adjudication record or part of the Wage Theft Adjudication Database.
 3. Receive, review, and process wage theft complaint according to the process established in Section 3.46.040.
 4. Coordinate with the Purchasing Director to ensure that the notice of the City’s Wage Theft ordinance is included in all the City’s bid documents.
 5. Provide and present an annual report to City Council regarding the number of employers in the Wage Theft Adjudication Database and an update on the status of the enforcement of the City’s Wage Theft ordinance.

Section 3.46.030 WAGE THEFT ADJUDICATION DATABASE

- A. Inclusion in Database.** No employer shall be included in the database until the Wage Theft Coordinator has:
1. Confirmed that an employer has a Wage Theft Adjudication record;
 2. Provided written notice at the address provided by the complainant, or on the documents evidencing the wage theft adjudication of the inclusion of the employer in the Wage Theft Adjudication Database.
 3. Allowed the employer thirty (30) days from the date of the notice to protest the employer’s inclusion in such database and provide the Wage Theft Coordinator evidence that the employer should not be included in the Wage Theft Adjudication Database. In the case of a wage theft judgment, the Wage Theft Coordinator shall not include the employer in the Database upon proof of full payment of outstanding wage theft adjudication judgment.
- B. Identity of Employer.** An employer operating as a business entity shall be listed by its corporate name, address and type of business organization. If the employer is an individual, the person’s name, business address, type of business or occupation shall be included.

C. Removal from Database. An employer shall be removed from the database if:

1. A Wage Theft Adjudication has been annulled, withdrawn, overturned, rescinded or abrogated, and such fact has been confirmed by the Wage Theft Coordinator; or
2. Employer provides proof of full payment of an outstanding wage theft adjudication judgment; or
3. Five (5) years or more has elapsed since the date of the employer's most recent Wage Theft Adjudication.

Section 3.46.040 WAGE THEFT COMPLAINTS PROCEDURE

A. Non- City Contracts. If no City contract is involved, the Wage Theft Coordinator shall assist persons with wage theft complaints by referring the complaint to the Texas Workforce Commission.

B. City Contracts.

1. **Filing a Complaint.** A person employed in connection with a city contract who has a good faith belief that he is the victim of wage theft may file a wage theft complaint with the Wage Theft Coordinator in writing. The complaint shall contain fact including but not limited to: identity of the employer, date(s) on or during which the wages were earned and were due to be paid, the amount of the wages alleged to have been withheld or unpaid.
2. **Notification and Resolution of the Complaint.** The Wage Theft Coordinator shall notify the employer of the receipt of the wage theft complaint. Employer shall attempt to resolve the alleged issue with the affected employee by written agreement within thirty (30) days from the receipt of the City notification. Employer shall notify the Wage Theft Coordinator if the issue was resolved between the Employer and the affected employee.
3. **Texas Workforce Commission.**

If no resolution is achieved, the complainant shall be referred to the Texas Workforce Commission ("Commission").

The Wage Theft Coordinator shall seek to determine status of the complaint at the commission. The Wage Theft Coordinator shall place Employer in the Wage Theft Adjudication Database if it appears that the Commission has made a finding that wage theft occurred.

Section 3.46.050 RETALIATION PROHIBITED

No City Contractor shall retaliate against any person who has filed a wage theft complaint pursuant to this Chapter. Retaliation means action to discharge from employment, discipline, or otherwise punish an employee for filing a wage theft complaint in good faith.

If the Wage Theft Coordinator determines that retaliation has occurred, the Wage Theft Coordinator shall refer the matter to the City Attorney for appropriate action.

Section 3.46.060. SANCTIONS AND PENALTIES- CITY CONTRACTS

Existing City Agreement.

1. In the event the City becomes aware of the fact an Employer acting under a contract which was awarded prior to the effective date of this Ordinance has been adjudicated for wage theft, the City may terminate the contract.
2. Prior to terminating the contract the City will provide Employer with thirty (30) days' notice and opportunity to provide full proof of payment of outstanding wage theft adjudication judgment.
3. The award of future City contracts after termination of an existing contract due to an Employer's wage theft adjudication shall be managed as a New City Agreement in this section.

New City Agreement.

1. In the event the City becomes aware an Employer with a wage theft adjudication record has submitted a bid or proposal for City work prior to the award of a contract, the City shall deem the Employer non-responsible and refuse to enter into a City Agreement with such Employer for a period of five (5) years after the date of final adjudication.
2. Prior to deeming the Employer as non-responsible, the City will provide the Employer with thirty (30) days' notice and opportunity to provide full proof of payment of outstanding wage theft adjudication judgment.

2.3.3 Request for Clarification

In order to meet the City's schedule it is extremely important that requests for clarification or additional information be submitted in writing no later than **November 13, 2015, 5:00 P.M. MST**. Questions submitted after this date may not elicit a response. All proposals or requests for clarification should be sent to the following:

BY E-MAIL

Haydee Peña
Purchasing Agent
Fax: (915) 212-0044
Email: penah@elpasotexas.gov

IN WRITING (MAIL OR HAND DELIVERY)

City of El Paso
Purchasing & Strategic Sourcing Department
300 N. Campbell, 1ST Floor
El Paso, TX 79901-1153
Attn: Haydee Peña

2.4 Schedule of Events

The following Schedule of Events represents the City's estimate of the timetable that will be followed in connection with this solicitation:

| EVENTS | DATE AND/OR TIME |
|---|----------------------------------|
| Release Request for Proposal | October 27, 2015 |
| Last Day for Offerors to Submit Written Questions | November 16, 2015, 5:00 P.M. MST |
| Answers provided | November 23, 2015 |
| Deadline for Initial Conceptual Proposal | December 7, 2015, 12:00 P.M. MST |
| Interviews for Short Listed Respondents | Week of January 4, 2016 |
| Deadline for Detailed Proposals | January 27, 2016, 2:00 P.M. MST |
| Contract Award Date | To be determined |

The City reserves the right, at its sole discretion, to adjust this Schedule of Events as it deems necessary. If necessary, the City will communicate adjustments to any event in the Schedule of Events in the form of an amendment. Amendment to this RFP will only be issued and posted on the City's website at: <http://legacy.elpasotexas.gov/purchasing/ep-invitations.asp>.

2.5 Contract Term (Initial and Option Terms)

To be negotiated with successful Offer.

Option Terms

To be negotiated with successful Offer.

Contracting Officer (CO) and Contracting Officer's Representative (COR)

Acceptance of services will be the responsibility of the Contracting Officer (CO), who also serves as City of Paso Purchasing Director, or designee. The Contracting Officer is responsible for final approval and acceptance of all services rendered. Upon contract execution, the Contracting Officer will delegate a Contracting Officer's Representative (COR) and Department Contracts Administrator(s) (DCAs) to assist with the administration of the resultant Contract.

2.6 Notices of Instruction to Offerors

1. Signature of Offer to person Authorized to Sign

All offers shall bear an original signature, in ink, of a responsible officer or agent of the company. If the Respondent is a joint venture or is comprised of a consortium of companies, an authorized representative of each joint venture or consortium member must sign the response. Failure to sign the offer portion of the solicitation, offer and award form, or to include a substitute signed document binding the offeror, will be the basis for declaring a proposal non-responsive.

2. Effective Period of Proposals

Proposals should expressly state that the offer will remain in effect until at least 120 consecutive days from the date set for the receipt of offers and may be accepted by the City of El Paso at any time on or before such date.

3. Required Number of Copies

Each respondent (the "Respondent") should submit one original and seven (7) copies of its response and one electronic version of the response on a jump drive (formatted as a searchable PDF) to the City prior to the deadline. The original copy containing original signatures shall be marked "Original".

4. Offer Submission Instructions

Responses to this RFP must be hand delivered (fax, email or other electronic submittal will not be accepted) no later than: (1) for the Initial Conceptual Proposal: 12:00 noon MST on December 7, 2015 and (2) for the Detailed Proposals: 2 pm noon MST on January 27, 2016 at 300 N. Campbell 1st Floor, El Paso, Texas 79901, Attn: Purchasing & Strategic Sourcing Department. Responses must be received prior to the pertinent deadline. Responses received after the specified date and time will not be accepted. Respondents accept all responsibility for delivering proposals to the address and department stated above within the specified time or the offer will be considered nonresponsive and will be returned to sender unopened.

5. Addressing Instructions

The envelope containing the offer must be addressed as follows:

City of El Paso
Purchasing & Strategic Sourcing Department
300 N. Campbell, 1st Floor
El Paso, Texas 79901-1153
Attn: Director

6. Labeling Of Proposals/Bids [Rev 6/15/05]

The Due Date and Solicitation Number must be written on the outside of the package containing the offer. The City Purchasing & Strategic Sourcing Department may open any unlabeled submittal to identify it properly. Offerors are required to identify their package to protect the integrity of their proposals and to fully avail themselves of the evaluation and selection process.

All submissions shall be provided in a sealed envelope marked:

DO NOT OPEN IN MAIL ROOM
Public Private Partnership Solicitation:
Request for Proposals for a Development Opportunity
for a Mixed-Use Urban Development, Including Structured Parking
RFP 2016-371R
Respondent's Name
Mailing Address

7. Offeror Delivery Responsibility

Bids received at the Purchasing Office after the specified date and time will not be accepted. Package delivery services such as FedEx, UPS, etc. deliver packages addressed to the Director of Purchasing directly to the Purchasing Department. U.S. Postal Service deliveries, including Express Mail, are only delivered to the Mail Room at City Hall and may or may not be delivered by the Mail Room to the Purchasing Division by the time and place proposals are recorded. The offeror accepts all responsibility for delivering its offer to address stated above within the specified time or the offer will be considered non-responsive and will be mailed back unopened. If the envelope does not reflect a return address, it will be opened for the sole purpose of obtaining the return address.

8. Descriptive Literature

Descriptive literature, where applicable, containing complete scope of services or other information sufficient for the City to determine compliance with the specifications must accompany each proposal, in DUPLICATE. If an Offeror wishes to furnish additional information more sheets may be added.

The City is not responsible for locating or securing any information that is not identified in the offer and reasonably available to the City, and the City will not be responsible for locating or securing information not included with the offer. In conducting its assessment the City may use data provided by the Offeror and data obtained from other sources, but while the City may elect to consider data obtained from other sources the burden of providing thorough and complete information rests with the Offeror.

9. Offer Documents, Supporting Literature and Related Data

Related data, where applicable, will be made part of the proposal. All documents, literature and related data submitted as an offer become the property of the City of El Paso.

10. Alternate Offers

The City of El Paso is not accepting alternate proposals for review, evaluation and/or consideration.

11. Solicitation Changes or Clarifications

Requests for changes or clarifications to this solicitation are welcomed by the Purchasing & Strategic Department for its consideration, provided the requests are in writing and received by **November 16, 2015 5:00 P.M. MST.** Requests received after that time may not elicit a response. Refer to REQUESTS FOR CLARIFICATION in Communication Section for more details.

Responses to all questions will be posted on the City's website at <http://legacy.elpasotexas.gov/purchasing/ep-invitations.asp>. Respondents should not contact members of the City Council or City Staff, other than Haydee Peña, regarding this solicitation.

12. Acknowledgement of Solicitation Amendments

All Amendments will be acknowledged on the *Solicitation of Offers* form (first page of this solicitation). Failure to do so may cause the proposal to be rejected. It is the Offeror's responsibility to ensure that all information regarding the RFP, including all amendments, is included in the offer. Amendments may be posted at any time up to and including the due date.

13. Proposal/Bid Preparation Cost

This solicitation does not commit the City of El Paso to pay any costs incurred in preparing and submitting the proposal or to contract for the services specified. This RFP is not to be construed as a contract or a commitment of any kind, nor does it commit the City of El Paso to pay for any costs incurred in the preparation of a formal presentation, or for any costs incurred prior to the execution of a formal contract.

14. Additional Information

For further procedural information concerning this Request for Proposal contact the point of contact for contract administration (refer to in the Communication Section for contact details).

15. Contract Performance

The Respondent shall be responsible for the completion of all work set out in the Contract and task orders. All work is subject to inspection, evaluation, and acceptance by City of El Paso. City of El Paso may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the Contract

16. Notification to Unsuccessful Offerors

All awards are made by the City Council of the City of El Paso. All City Council agenda are posted on the City of El Paso's Web Page for review by all Offerors. The URL is: <http://www.elpasotexas.gov>.

17. Acceptance or Rejection of Proposals

The City reserves the right to accept or reject any or all proposals, to waive all minor technicalities, and to accept the proposal or proposal determined to be the most advantageous to the City. Additionally, the City may accept a proposal subject to an exception if, in the sole judgment of the City, the proposal meets or exceeds the City's specifications.

18. Failure to Respond to Solicitations

Any offeror who fails to respond to three consecutive solicitations will be purged from the mailing list. It is the offeror's responsibility to remain on the mailing list under his requested commodity classes.

19. Time

[RESERVED]

20. Debriefing Requests

A written request for a debriefing should be directed to the Analyst identified in **Request for Clarification in Part 2, Item 2.3.2** within five (5) days after the date of award. Debriefing requests will be scheduled with the appropriate evaluation committee and Purchasing representative.

Only an Offeror who has actually submitted a proposal may appeal an award decision.

21. Protest

Failure to follow the requirements of the Protest procedures established by the City of El Paso, Texas, shall constitute a waiver of all protest rights. Protest must be made after the Council agenda has been posted and by 5 p.m. the day before the Council meeting in which the award will be made. The Offeror must write a letter to Bruce D. Collins, Purchasing Director, using the phrase "Proposal Protest" to the address listed above. Protest must be sent by certified or registered mail or delivered in person. Note: the recommendation for award is posted on the City's website at least 72 hours before each Tuesdays Council meeting.

The written protest should include 1) the Request for Proposal number and should clearly state, with particularity, the relevant facts believed to constitute an error in the award recommendation, or desired remedy; 2) a specific identification of the statutory or regulatory provision that the Protesting Offeror alleges has been violated and the provisions entitling the Protesting Offeror to relief; 3) a specific factual description, with particularity, of each action by the City that the Protesting Offeror alleges to be a violation of the statutory or regulatory provision that the Protesting Offeror has identified pursuant to item (2) of this paragraph (mere disagreement with the decisions of City employees does not constitute grounds for protest). If there is no disputed issue of the material fact, the Protest must indicate this as well.

Only the information provided within the protest period will be considered for response.

22. Respondent and Team Members

The Respondent may be a single entity or a group of entities that have come together to respond to this RFP in the form of a joint venture or consortium of one type or another. If the Respondent includes multiple entities, each entity is responsible for providing the information requested, required assertions and certifications, required disclosure and signatures.

The Response may include, and the Respondent may rely on, certain team members who would be contracted by the Respondent to provide the necessary experience in this RFP. Any team members upon whose experience the Respondent depends to fulfill the obligations proposed under this RFP (such as a contractor, architect, attorney, hotel operator, parking manager, etc.) is considered a "key team member" for the purposes of responding to the information requested below. The Respondent may not replace key team members if selected by the City to undertake the Project, without written consent by the City.

PART 3 - SCOPE OF WORK

3.1 Proposal Format: Initial Conceptual Proposal (Part 1)

Tab 1: Cover Letter & Executive Summary

Cover Letter: Each response should include a cover letter. The cover letter should (1) identify the Respondent or consortium of private entities that will be directly involved in the Project; (2) identify the principal(s) and include title(s), mailing address, phone number and email address for each; (3) Identify the person(s) responsible for negotiations, key personnel who will be in charge of decision making, and the representative authorized to sign on behalf of the Respondent; (4) acknowledge receipt of any and all addenda published with regard to this RFP on the City's website and accept the City's terms and conditions, also published on the website; and (5) confirm inclusion of the Conflicts of Interest form in the exhibits to the Response.

Executive Summary: Provide a three to five page Executive Summary that highlights the key components of the Project, including, but not limited to, describing the Respondent and specific qualifications and experience with similar projects, highlights of the proposed Project, and an overview of the community impact and benefits of the Project.

Tab 2: Respondent and Team

Provide a summary of the Respondent and the proposed team.

1. Respondent: Identify the Respondent, including the legal structure of the entity, joint venture or consortium of private entities and the respective principals of each.
2. Team: Identify the team, to the extent a team is created, specifically as follows: (a) provide a list of all team members and note which team members the Respondent considers "key team members" (company name, primary contact, title, address, telephone and email of each team member and any selected or prospective professional or consultant which may include analysts, general contractor, architects, engineers, attorneys, marketing firms, real estate brokers, hotel operators, parking garage operators and/or consultants, and property management firms); (b) identify all firms that will provide design, construction and completion guarantees; (c) provide an organizational chart that clearly illustrates the team and identifies the roles of each team member, including an overall Project Manager, design professional, consultant or major contractors participating in the development or operation of the Project; and (d) describe the team management structure and the role each team member, partner, and any prospective professional, consultant or major contractor(s) will fulfill in the development or operation of the Project.

Resumes, including specific experience on projects similar to the Project, for key proposed team members should be included in Exhibit A to the response (located in Tab 5).

Tab 3: Qualifications and Financial Capacity

1. Overview: Provide demonstrable experience in the development and operation of projects of similar scope and scale to the Project.
2. Specific Experience: (a) Describe relevant experience with respect to the development and operation of other commercial or public-private partnership projects, clearly distinguishing the experience of the Respondent from that of consultants and other team members; (b) describe the length of time Respondent has been in business, business experience, public sector experience, and other current or pending engagements of the Respondent and primary team members.
3. Previous Project List: Provide, for Respondent and for each key team member, up to five prior projects completed within the past ten years of similar size and scope to the Project. For each project identified, include the following: (a) project name and location, and client name and contact information (including address, telephone number, and email); (b) project description including total development costs as completed, year completed, and (for Respondent and General Contractor) budget and schedule adherence; (c) role in the project; and, for Respondent's projects, (d) the financial structure used to finance the project, including the name of the construction lender if applicable, the amount of private debt, the amount of private equity, the amount and nature of any public subsidies or incentives, and the amount and nature of any other sources of funds.
4. Guarantees and Warranties: Describe the design, construction, and completion guarantees for the Project. Provide evidence of willingness and ability of the Respondent's general contractor to provide guaranteed maximum price and completion date with requisite guarantees and bonding.
5. Case Study: Provide one detailed case study of the most relevant comparable project developed by the Respondent. The case study should include: (a) project name and location; (b) if relevant, client's name and location and contact information; (c) project team, including contact information; (d) complete description of project, including type of project, square footage, tenants, plans and photographs; (e) overview of success in completing project on time and on budget; (f) description of any land use or entitlement issues; (g) performance schedule from contract to completion, including stabilization, if relevant; (h) description of financial structure, including an overview of sources and ratio of debt to equity, and the amount and nature of any public incentives or subsidies; (i) an overview of performance evaluation for the project; and (j) description of any public involvement process and challenges or obstacles, if any, arising from that process, including efforts to successfully overcome them. The City will include the contacts provided in the Case Study in the Respondent's references.
6. References: Provide three references for Respondent and for each key team member, with complete contact information (including address, telephone number, and email), in addition to the firms/contacts listed in the Case Study. One of the references for Respondent should be a financial reference.
7. Qualifications Statement: Confirm that Respondent and/or its team members have the requisite technical qualifications and business integrity, and adequate financial resources, bonding capacity, and insurance coverage to complete the Project.

8. **Financial Capacity:** Demonstrate access to financial resources such as the ability to provide equity and secure debt to deliver the Project in a professional and timely manner, including: (a) an overview of Respondent's current real estate portfolio, including the size, value and years of ownership, asset performance compared to initial pro forma statements, and any other relevant information; and (b) a listing and description of all pending projects, including the status, development schedule, financing methods, sources, amounts and financial commitments required of Respondent.
9. **Disclosure:** Respondent and key team members should disclose any of the following to have occurred in the past ten years: bankruptcy filings; payment of liquidated damages; professional/contractual fines, assessments or penalties; judgment or awards in contract disputes; contract defaults or terminations; license revocations, suspensions or other disciplinary actions; prior debarments or suspensions by a governmental entity; denials of pre-qualifications or findings of non-responsibility; safety citations and accident information, including injury rates; criminal indictments or investigations; alleged violations of civil or criminal law; claims on payment or performance bonds; and any funding source action in the past five years, including whether any funding sources or financial institutions have threatened to take or have taken adverse action against the Respondent, such as loan acceleration or foreclosure.

Tab 4: Proposal

Provide an overview of the proposed Project, including the following:

1. **Design Concept:** The Respondent's proposal should include a concept site plan, a basic building program and a narrative description that collectively illustrate the location, size, context, and character/quality of the Project, including:
 - a. **Concept Site Plan** – Provide a site plan, in a scale of not less than 1"=32' which encompasses the subject property and portions of contiguous parcels. The preliminary site plan shall indicate all major vehicular and pedestrian entrances and exits, proposed outdoor areas, and the circulation plan showing how the Project relates to public rights of way to and within the site, for walking, cycling, public transportation and motor vehicles.
 - b. **Basic Building Program** – Provide a table of proposed uses for Project including type of use and associated approximate net and gross square footage, number of structured parking spaces (and surface spaces if any), number of units if residential is proposed, and number of guestrooms if a hotel is proposed. Break down the square footage and units by level of each use and indicate the proposed number of levels for each structure.
 - c. **Narrative Description** – Provide a general description of the proposed Project, general architectural character and intended quality of design, structure, exterior and interiors. Identify comparable properties, if any, considered to be indicative of the quality and character of the proposed Project. If a hotel is proposed, describe the levels of service and quality anticipated for the hotel, including hotel brands that may be considered. Describe the types of spaces and amenities anticipated for the hotel (e.g., meeting space, fitness center, etc.). If residential is proposed, describe the associated proposed amenities. If retail is proposed, describe the types of tenants anticipated for the space.
 - d. **OPTIONAL** – Respondent may provide floor plans, sections, elevations, massing diagrams, perspectives, renderings, and or other design information in its proposal, but the inclusion of any such information shall not cause the City to score Respondent's more highly than other proposals that do not include such information.

2. *Project Overview:* Provide the following:

- a. Business Arrangement – Describe the general proposed business arrangements anticipated for the Project (i.e.: hotel operating agreement, multifamily complex management agreement, restaurant and retail, parking management agreement, etc.).
- b. Business Plan – Describe the general plan for the development, financing and operation of the Project. To the extent the Respondent has identified federal, state, or local funding sources or tax or other incentives in the finance plan for the Project, include a description of such sources.
- c. Provide an explanation on how the Project will complement or comply with the City's goal of developing a parking garage for public use and share the risk and expense of this garage with the private sector.
- d. Preliminary Programmatic Development Budget – Provide a programmatic budgeted total development cost per square foot of the mixed-use development by use and cost per square foot and per space of the parking garage.
- e. City Participation – Describe the requested City participation, if any, in the Project plan of finance, including ground lease terms (or other proposed terms for site disposition), and/or any financing, funding or incentives requested from the City. Indicate whether Respondent proposes that the City would receive any fees, payments, or other participation in cash flow from the project in return for any proposed City funding or financing.
- f. Implementation Strategy and Timeline – Describe the implementation strategy for the Project. Provide a preliminary schedule including permits and governmental approvals, design period, construction phasing, completion and opening of the Project.
- g. Miscellaneous – To the extent applicable or known to Respondent, provide the following: other opportunities that will benefit the viability of the Project; adjacent uses and emerging developments that impact the value or influence the use of the Project; general economic development activity anticipated to follow the development of the Project and how the Project can maximize those opportunities; connections to public transportation; and additional components to the Project that provide a civic, educational, cultural or other benefit to the City.

3. *Terms, Special Conditions and Other Considerations:*

- a. State the terms offered and any contingences requested by the Respondent for the Project.
- b. Identify any additional terms or conditions to be included as part of the negotiation process.

Tab 5: Addenda

Respondent should use this section to present any additional information such as letters of recommendation, letters of interest from prospective lenders or tenants, or other information that supports the proposal, including Exhibit A: Resumes.

Tab 6: Certificates & Assertions

1. *Insurance Certificate:* Certificate of Insurance evidencing the Respondent's current limits of liability for commercial general liability, business automobile liability, and professional liability insurance. Insurance Certificates should be provided for each key team member.
2. *Respondent Information:* The name and address of the Respondent, location of all offices and number of employees in each office, number of years the Respondent has been in existence, assertion that the Respondent is authorized to business in and is in good standing with the State of Texas.

3. *Conflict of Interest:* The Respondent and each key team member shall complete and submit as part of their proposal a Texas Local Government Code Chapter 176 Conflict of Interest Questionnaire.
4. *No Debarment:* For the Respondent and each major contractor that will perform construction or design activities, provide a sworn certification by an authorized representative attesting to the fact that it is not currently debarred or suspended by any federal, state, or local governmental entity.
5. *Reports and Financial Statements:* Provide the most recent credit report or Dun & Bradstreet report and certified financial statements for the past three (3) years of Respondent. Certified financial statements shall include balance sheets, income statements, and statements with changes in financial position of any parent organizations and any materially relevant subsidiaries, identification of any projects with negative cash flows, amount of Respondent's recourse debt, any non-performing loans, and the amount of guarantees and contingent liabilities.
6. *Statement of Public Trading:* If the Respondent is publicly traded, include the stock exchange and trading symbols and a copy of the most recent 10k.

PART 4: PROPOSAL FORMAT AND STRUCTURE

4.1 Proposal Format and Structure

All submissions must follow the submission guidelines below. The City reserves the right to reject proposals not in compliance with these requirements.

Proposals shall be packaged and formatted as follows

1. Pages shall be numbered and organized by paginated table of contents corresponding to the tabbed sections identified herein.
2. Contents shall be printed on 3-hole punched 8 ½" x 11" paper (excepted drawings and renderings as necessary, which shall be printed no larger than 36" x 54")
3. All submissions shall be provided in a sealed envelope marked:

DO NOT OPEN IN MAIL ROOM
Public Private Partnership Solicitation:
Request for Proposals for a Development Opportunity
for a Mixed-Use Urban Development, Including Structured Parking
RFP 2016-371R
Respondent's Name
Mailing Address

In addition, the City requires that all proposals contain the following:

4. Offeror's Proposal – State in succinct terms the Offeror understands of the services to be provided and how the Offeror anticipates being able to meet the scope of work as delineated within Part 3 Scope of Work.
5. Contract Clauses and Forms – Include all pages and completed forms. In addition to the above information, describe any prior or pending litigation, civil or criminal, involving a governmental agency or which may affect the performances of the services to be rendered. This includes any instances in which

the Offeror or any of its employees, subcontractors, or sub-consultants is or has been involved within the last three years.

6. Response must demonstrate your comprehension of the objectives and services from the RFP. Do not merely duplicate the Scope of Work as presented within this RFP.
7. Appendices – include any additional information that the Offeror deems important to the decision process but that is not specified elsewhere in the RFP.
8. Identify the project organization and staffing. A project organizational chart is to be provided, along with resumes of the personnel assigned to the project. Level of staff for work to be performed under this Contract. Proposals must describe the work to be performed by the individuals you name to perform essential functions and detail their specific qualifications and substantive experience directly related to this RFP. A response prepared specifically for this RFP is required. Marketing resumes often include non-relevant information that may detract from the evaluation of a proposal. Lists of projects are not useful. Focus on individual's specific duties and responsibilities and how project experience is relevant to the requirements of this RFP.
9. References that are not relevant to RFP should not be included. Therefore, the References provided should be directly related to the requirements in the SOW. The City is particularly interested in government references. The City may obtain other information by sending out questionnaires and/or through other sources. References other than those identified by the Offeror may be contacted by the City with the information received used in the evaluation.
10. Additional Information. Offerors are asked not to include loose brochures (e.g. general marketing material). Brochure material will not be considered for review. Only pertinent information should be submitted.

FEDERAL MINIMUM WAGE

The current Federal minimum wage shall be required by the City of El Paso for any contracts requiring an hourly wage rate as part of the bid. In such cases, the awarded vendor's employees shall be paid, at a minimum, the federally mandated minimum wage and the vendor shall be required to submit certified payrolls, when requested, to verify the wage rate requirement.

If the federally mandated minimum wage is increased during the term of this contract, Contractor may submit a written request for a price adjustment. The City will consider an adjustment only to the extent shown by the Contractor to be necessary to meet increased federal requirements for minimum wage employees included in the bid.

PART 5 - PROPOSAL EVALUATION

5.1 Review Criteria & Selection Process

Responses shall be reviewed first by the Capital Improvement Department to determine whether:

1. The Response serves the public purpose of providing a parking garage for public use in the downtown area;

2. Funding proposed for the Project is reasonably available;
3. The Response is economically feasible and cost effective; and
4. The extent that the Response, on its face, meets the Evaluation Criteria described below.

Based on this preliminary review, the Capital Improvement Department shall prepare a recommendation to the City Manager that the Response either be rejected or presented to the Selection Committee for further consideration.

After receiving the preliminary recommendations, the City Manager shall determine whether to:

1. Cancel the solicitation and not proceed with any further review of the Responses; or
2. Provide the Conceptual Proposals to a Selection Committee to review and analyze in detail and conduct interviews with short-listed respondents; and/or
3. Proceed to rank the responses and commence negotiations with the top-ranked Respondent.

The City reserves the right at all times to reject any proposal or all proposals at any time for any reason in its sole discretion.

5.2 Evaluation Criteria

The City's Selection Committee shall review and rank the responses to this RFP based on the following criteria:

1. *Qualifications and Experience*
 - a. Experience working with the public sector on public-private real estate projects;
 - b. Experience with projects of similar size, scope and complexity;
 - c. Extent of available team, logistical resources, and ability to complete the project in a timely and professional manner;
 - d. Demonstrated record of success in past performance on projects of similar size and scope, including on-time and on-budget delivery, compliance with plans and specifications, quality of project, cost control, and project safety;
 - e. Demonstrated compliance with applicable laws, codes, standards, regulations, and agreements on past projects;
 - f. Team structure and leadership;
 - g. Project manager's experience;
 - h. Management and operational experience;
 - i. The general reputation, industry experience, and financial capacity of the Respondent;
 - j. Financial condition and capacity of Respondent; and
 - k. Proposed Project structure, including ownership structure.
2. *Project Characteristics*
 - a. Project scope and scale, land use, and product mix;
 - b. Schedule and timing of Project completion;
 - c. Project analysis;
 - d. Proposed design of the Project;
 - e. Operation and maintenance of Project; and
 - f. Environmental impacts and any condemnation impacts.

3. *Project Cost and Financing*

- a. Total investment;
- b. Financial benefit to the City; and
- c. Financial plan, including overall feasibility and reliability of plan, including Respondent's past performance with similar plans and similar projects.

4. *Community Impact*

- a. Economic impact the Project will have on the City in terms of tax revenue and jobs generated (including level of pay and fringe benefits);
- b. Compatibility with existing and planned facilities; and
- c. Respondent's plans to employ area subcontractors.

5.3 **Evaluation and Award Process**

As part of the requirement to establish the responsibility of the Offeror, the City of El Paso may perform a price analysis to determine the reasonableness of the price(s) at which the supplies and/or services are offered. Prices that are significantly lower than the mean of all offers and that appear to be unreasonably low may be determined to be evidence of non-responsibility, and cause the Offer to be rejected.

- A. The Evaluation Committee shall be established to evaluate proposals based solely on the Evaluation Factors set forth below. Factors not specified in the RFP will not be considered. The City reserves the right to waive any minor irregularities or technicalities in the proposals received. Proposals will be evaluated on an individual basis against the requirements stated in the RFP.
- B. Minor problems of completeness or compliance may be called to the attention of Offerors for clarification. Substantial deviations from specifications or other requirements of this RFP will result in disqualification of the proposal.
- C. Cost will not be the only consideration in the selection of short listed proposals. Detailed evaluation of proposals will involve a determination of the most favorable combination of various elements contained in this RFP. The selection of the ultimate winning proposal will be based upon what the evaluators believe to be most advantageous to the City.
- D. During the evaluation process, the City reserves the right, where it may serve in the City's best interest, to request additional information or clarifications from Offerors, or to allow corrections of errors or omissions.
- E. After evaluations, the Evaluation Committee will determine a short list also known as competitive range. The short list/competitive range include the proposals that have a reasonable chance of being selected for award considering all aspects of the RFP. The City may request Best and Final Offers (BAFO) and negotiate with the Respondent(s) who fall within the short list/competitive range. If required, only those Respondents within the short list/competitive range may be selected for an oral presentation and/or interview.
- F. The presentation/interview process will be arranged by the Evaluation Committee for purposes of discussion and/or clarification.

- G. The City reserves the right to negotiate the final scope of services, price, schedule, and any and all aspects of this solicitation with all Respondents in the competitive range. Once negotiations are complete, the City shall establish a common date and time for the submission of Best and Final Offers. If a Respondent does not submit a notice of withdrawal of its offer, or a Best and Final Offer, the Respondent's immediate previous offer shall be construed as its best and final offer.
- H. The best and final offers shall be evaluated in essentially the same manner as the initial offers. The contract shall be awarded to the responsible Respondent whose qualifications, price and other factors considered, are the most advantageous to the City.
- I. The City reserves the right to award this contract to one Respondent, to make multiple awards and to award without discussions. The city may reject any or all offers if such action is in the City's interest, award contract other than to the lowest respondent, waive informalities and minor irregularities in offers received, and award all or part of the requirements stated.
- J. Proposals that are considered non-responsive will not receive consideration. The City reserves the right at any time during the evaluation process to reconsider any proposal submitted. It also reserves the right to meet with any Respondent at any time to gather additional information. Furthermore, the City reserves the right to delete, add or modify any aspect of this procurement through competitive negotiations up until the final contract signing.
- K. The successful Offeror's proposal will be incorporated into the final contract. Any false or misleading statements found in the proposal will be grounds for disqualification or contract termination. Submission of a proposal indicates acceptance by the Offeror of the conditions contained in this RFP, unless clearly and specifically noted in the proposal and confirmed in the contract between the City and the Offeror selected.

PART 6 - MANDATORY SUBMITTALS

- 6.1 Business Information Certification
- 6.2 Non-Collusion and Business Disclosure Affidavit
- 6.3 Indebtedness Affidavit
- 6.4 Direct Deposit Sign-up Form
- 6.5 Attachment "A" – Contract Clauses



SECTION D FORMS

BUSINESS INFORMATION CERTIFICATION

Mark all that apply.

- | | |
|---|--|
| <input type="checkbox"/> Manufacturer or Producer | <input type="checkbox"/> Disadvantaged Business Enterprise |
| <input type="checkbox"/> Wholesaler | <input type="checkbox"/> Asian - Pacific American |
| <input type="checkbox"/> Retailer | <input type="checkbox"/> Black American |
| <input type="checkbox"/> Franchised Distributor | <input type="checkbox"/> Hispanic American |
| <input type="checkbox"/> Factory Representative | <input type="checkbox"/> Native American |
| <input type="checkbox"/> Other _____ | <input type="checkbox"/> Woman Owned Business |
| <input type="checkbox"/> Large Business | <input type="checkbox"/> Handicapped |
| <input type="checkbox"/> Small Business | <input type="checkbox"/> Local Business Enterprise |
| | <input type="checkbox"/> HUB State Certified Historically Underutilized Business (please furnish copy of Certification) |

SMALL BUSINESS CONCERN: Less than \$1,000,000.00 in annual receipts or fewer than one hundred [100] full time employees.

DISADVANTAGED BUSINESS ENTERPRISE: At least fifty-one percent [51%] owned by one or more socially disadvantaged individuals, or a publicly held corporation with at least fifty-one percent [51%] of the stock owned by one or more such individuals.

WOMAN-OWNED BUSINESS: At least fifty-one percent [51%] owned by a woman, or women, who also control and operate the business. "Control" in this context means making policy decisions. "Operate" in this context means actively carrying on day to day management

HANDICAPPED: At least fifty-one percent [51%] owned by a person or persons with an orthopedic, otic [hearing], optic [visual], or mental impairment which substantially limits one or more of their major life activities.

LOCAL BUSINESS: A business with a Tier 1 or Tier 2 principal place of business within in incorporated city limits of El Paso, Texas.

HUB [HISTORICALLY UNDERUTILIZED BUSINESS]: A Business Enterprise, which has been granted a Certificate by the State of Texas, as a Historically Underutilized Business. The City of El Paso utilizes information on Historically Underutilized Businesses (HUB), from the State of Texas Comptroller of Public Accounts (CPA), HUB Program, 1711 San Jacinto Ave, P.O. Box 13186, Austin, Texas 78711. The City encourages you to contact the State if you feel you may qualify.

I certify that the foregoing information is a full, true and correct statement of the facts.

Signature of Person Authorized to Sign Application

Title

Date



**City Of El Paso
Purchasing & Strategic Sourcing Department**

NON-COLLUSION AND BUSINESS DISCLOSURE AFFIDAVIT

THIS IS AN OFFICIAL PURCHASING DOCUMENT – RETAIN WITH PURCHASE ORDER FILE

Before me, the undersigned official, on this day, personally appeared _____, a person known to me to be the person whose signature appears below; whom after being duly sworn upon his/her oath deposed and said:

1. I am over the age of 18, have never been convicted of a crime and am competent to make this affidavit.
2. I am a duly authorized representative of the following company or firm (the "Offeror") which is submitting a response to *2016-371R DEVELOPMENT OPPORTUNITY FOR A PUBLIC PRIVATE PARTNERSHIP FOR A MIXED-USE URBAN DEVELOPMENT, INCLUDING STRUCTURED PARKING AT MILLS AVENUE AND CAMPBELL IN DOWNTOWN EL PASO –Economic Development*:

_____ (Name of Offeror).

3. **BY SUBMITTING THIS BID, I CERTIFY THAT OFFEROR AND ITS AGENTS, OFFICERS OR EMPLOYERS HAVE NOT DIRECTLY OR INDIRECTLY ENTERED INTO ANY AGREEMENTS, PARTICIPATED IN ANY COLLUSION, OR OTHERWISE TAKEN ANY ACTION IN RESTRAINT OF FREE COMPETITIVE BIDDING IN CONNECTION WITH THIS PROPOSAL OR WITH ANY CITY OFFICIAL.**

4. I have listed in **Paragraph 10** below all the names the Offeror uses and has used in the past and certify that I have disclosed all such names, including any assumed (DBA) names.

5. **Certificate of Organization.** In completing this Affidavit, I have attached a copy of the organization certificate issued by the Secretary of State of the state in which the company was organized (i.e. Certificate of Formation, Certificate of Good Standing, Statement of Operation or Registration and/or a copy of Assumed Name Certificate if the Offeror/Offeror used a trade name in the Solicitation documents is other than the name under which company was organized).

6. **Material Change in Organization or Operation.** *Except as described in Paragraph 10 below*, I certify that Offeror is not currently engaged nor does it anticipate that it will engage in any negotiation or activity that will result in the merger, transfer of organization, management reorganization or departure of key personnel within the next twelve (12) months that may affect the Offeror's ability to carry out the contract with the City of El Paso.

7. **Debarment/Suspension.** *Except as described in Paragraph 10 below*, I certify that Offeror and its subcontractors, officers or agents are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any covered transactions by any federal, state or local department or agency. If such an event has occurred, state in **Paragraph 10** below, the reason for or the circumstances surrounding the debarment or suspension, including but, not limited to, the name of the governmental entity, the period of time for such debarment or suspension and provide the name and current phone number of a governmental contact person familiar with the debarment or suspension.

I understand the Offeror is obligated to immediately inform the City in the event that the Offeror is included in such a debarment/suspension list during the performance of this Contract with the City of El Paso.

8. **Default/Termination of Contracts.** *Except as described in Paragraph 10 below*, I certify that, within the last 24 months, there are no Contract(s) between the Offeror and a governmental entity that have been terminated, with or without the Offeror's default. If such a contract has been terminated within the last 24 months, state in **Paragraph 10** below the reason for or circumstances surrounding the termination.

9. **Taxpayer Identification.** In completing this Affidavit, I have also attached a copy of a completed Form W-9 that shows the Offeror's taxpayer identification number (Employer Identification Number or Social Security Number). I understand that failure to provide this information may require the City to withhold 20% of payments due under the contract and pay that amount directly to the IRS.

10. Additional Information (state the number of paragraph above which corresponds to the information provided)

(Attach additional pages if needed)

Attached are the following:

Certificate of Organization (required by **Paragraph 5**)

Taxpayer Identification (required by **Paragraph 9**)

I understand that by providing false information on this Affidavit, I could be found guilty of a Class A misdemeanor or state jail felony under the Texas Penal Code, Section 37110. In addition, by providing false information on this Affidavit, the Offeror it could be considered not responsible on this and future solicitations, and such determination could result in the discontinuation of any/all business or contracts with the Offeror by the City of El Paso.

Signature

SUBSCRIBED AND SWORN to before me on this _____ day of _____, 20____.

Notary Public

Printed Name

Commission Expires



**City Of El Paso
Purchasing & Strategic Sourcing Department**

INDEBTEDNESS AFFIDAVIT

THIS IS AN OFFICIAL PURCHASING DOCUMENT – RETAIN WITH PURCHASE ORDER FILE

Before me, the undersigned authority, on this day personally appeared _____ [FULL NAME] (hereafter “**Affiant**”), a person known to me to be the person whose signature appears below, whom after being duly sworn upon his/her oath deposed stated as follows:

1. Affiant is authorized and competent to give this affidavit and has personal knowledge of the facts and matters herein stated.
2. Affiant is an authorized representative of the following company or firm: _____ [Contracting Entity’s Corporate or Legal Name] (hereafter, “**Contracting Entity**”).
3. Affiant is submitting this affidavit in response to the following bid: *Solicitation No. 2016-371R DEVELOPMENT OPPORTUNITY FOR A PUBLIC PRIVATE PARTNERSHIP FOR A MIXED-USE URBAN DEVELOPMENT, INCLUDING STRUCTURED PARKING AT MILLS AVENUE AND CAMPBELL IN DOWNTOWN EL PASO – Economic Development*, which is expected to be in an amount that exceeds \$50,000.00.
4. Contracting Entity is organized as a business entity as noted below (check box as applicable):

For Profit Entity (select below):

- ☐ Sole Proprietorship
- ☐ Corporation
- ☐ Partnership
- ☐ Limited Partnership
- ☐ Joint Venture
- ☐ Limited Liability Company
- ☐ Other (Specify type in space provided below):

For Non-Profit Entity or Other (select below):

- ☐ Non-Profit Corporation
- ☐ Unincorporated Association

5. The information shown below is true and correct for the Contracting Entity. If Contracting Entity is a sole proprietorship or partnership, list all owners of 5% or more of the Contracting Entity. Where the Contracting Entity is an unincorporated association, the required information has been shown for each officer. [Note: In all cases, use FULL name, business and residence addresses and telephone numbers.]

Contracting Entity:

| | |
|----------------------------------|--|
| Name | |
| Business Address [No./Street] | |
| City/State/Zip Code | |
| Telephone Number | |
| Resident Address (if applicable) | |
| City/State/Zip Code | |
| Telephone Number | |
| Federal Tax ID Number | |
| Texas Sales Tax Number | |

5% Owner(s) or Officers of Unincorporated Association ** (If none, state "None"):

| | |
|----------------------------------|--|
| Name | |
| Business Address [No./Street] | |
| City/State/Zip Code | |
| Telephone Number | |
| Resident Address (if applicable) | |
| City/State/Zip Code | |
| Telephone Number | |

**Attach additional pages if necessary to supply the required names and addresses.

6. Affiant understands that in accordance with Ordinance No. 016529 of the City of El Paso (the "**City**"), the City may refuse to award a contract to or enter into a transaction with Contracting Entity that is an apparent low Offeror or successful Offeror that is indebted to the City.
7. Affiant understands that the term "**Debt**" shall mean any sum of money, which is owed to the City by a Contracting Entity, Owner, or Vendor, that exceeds one hundred dollars (\$100.00) and that has become Delinquent, as defined hereinafter. Such Debt shall include but not be limited to: (i) property taxes; (ii) hotel/motel occupancy taxes; and (iii) license and permit fees.
8. Affiant understands that the term "**Delinquent**" shall mean any unpaid Debt that is past due for sixty (60) days or more and, which is not currently subject to challenge, protest, or appeal.
9. Affiant represents that to the best of its knowledge, the Contracting Entity is not indebted to the City in any amounts as described in Item No. 7 above, as of the date of the submittal. If the Contracting Entity is indebted to the City, the following represents the type and estimated amount of indebtedness:

10. If the Contracting Entity is indebted to the City, describe any payment arrangements that have been entered into to settle the Debt.

11. In the event that the City refuses to do business with a Contracting Entity due to any indebtedness listed above or as determined by the City Financial Services Department, the Contracting Agency may appeal this determination in accordance with the appeal regulations in Ordinance 016529.

Affiant certifies that he is duly authorized to submit the above information on behalf of the Contracting Entity, that Affiant is associated with the Contracting Entity in the capacity noted above and has personal knowledge of the accuracy of the information provided herein; and that the information provided herein is true and correct to the best of Affiant's knowledge and belief. Affiant understands that providing false information on this form shall be grounds for debarment and discontinuation of any/all business with the City of El Paso.

SUBSCRIBED AND SWORN to before me on this

Signature

_____ day of _____, 20____.

Notary Public

Printed Name

Commission Expires

**CITY OF EL PASO PURCHASING DEPARTMENT
VENDOR INFORMATION FORM**

This form must be accompanied by an IRS Form W-9 and Conflict of Interest Questionnaire.

___ Add ___ Update ___ Inactivate ___ Vendor ___ Contractual Employee ___ City of El Paso Employee

Send To: Suky Flores, Sr. Office Asst. – Purchasing Telephone #: 915-541-4179 Fax #: 915-541-4347

From: Name: _____ City Department: _____ Tel. # _____

VENDOR SALES ADDRESS: If same as W-9 check box ☐

Company Name: _____

Street: _____

City: _____ State _____ Zip Code _____

Contact Name & Title: _____

Telephone # (_____) _____ Fax # (_____) _____

E-Mail Address: _____ Web Page: _____

VENDOR STATUS:

- (Yes ___) (No ___) Small business concern (Less than \$1,000,000.00 Annual Receipts or 100 employees.)
- (Yes ___) (No ___) Disadvantage business concern (At least 51% owned by one or more socially disadvantaged individuals; or, a publicly-owned business at least 51% of the stock owned by one or more of such individuals.) If your company is certified please send us a photo copy. We must have an updated copy of the certificate on file. DBES include (Please mark one:)
- (___) Black Americans (___) Hispanic Americans
- (___) Native Americans (___) Asian-Pacific Americans
- (Yes ___) (No ___) Woman-owned business (At least 51% owned by a woman or women who also control and operate it. "Control" in this context means exercising the power to make policy decisions. "Operate" in this context means being actively involved in the day-to-day management.)
- (Yes ___) (No ___) Handicapped (At least 51% owned by a person or persons with an orthopedic, hearing, mental or visual impairment which substantially limits one of more of his/hers/their major life activities.)
- (Yes ___) (No ___) Local business enterprise (At least 51% of which is owned by a resident or residents of El Paso County and the principal place of business is in El Paso County.)
- (Yes ___) (No ___) Hub (Historically underutilized business) If your company is certified please send us a photo copy. We need to have an updated copy of the certificate on file.

CITY OF EL PASO EMPLOYEES (IRS-Withholding not required for the following items)

___ Pension ___ Refund ___ Mileage ___ Reimbursement ___ Settlement ___ Travel Request ___ Tuition Reimbursement

CONTRACTUAL EMPLOYEES OR VENDORS

- Based on W-9, Individual/Sole Proprietor or Partnership are marked as withholding. Corporation is not marked as withholding.
- Vendors for Rent, Medical Services, Attorney Fees are **always** marked as withholding, even if they are a Corporation

IRS-Withholding required information – Mark one of the following which applies to the type of payment that will be made to the vendor: (Incomplete forms will be returned to requester),

| | |
|---|---|
| ___ Wages (Withholding / Default Class 7) | ___ Juror (No Withholding / No Default Class) |
| ___ Goods (No Withholding / No Default Class) | ___ Services (Withholding / Default Class 7) |
| ___ Settlement / Attorney Proceeds (Withholding / Default Class 14) | ___ Rental Property (Withholding / Default Class 1) |
| ___ Medical & Healthcare (Withholding / Default Class 6) | ___ Stipend (No Withholding / No Default Class) |
| ___ Garnishment Vendor (No Withholding / No Default Class) | ___ Corporation (No Withholding / No Default Class) |

**Request for Taxpayer
Identification Number and Certification**

**Give Form to the
requester. Do not
send to the IRS.**

Print or type
See Specific Instructions on page 2.

| | |
|--|---|
| Name (as shown on your income tax return) | |
| Business name/disregarded entity name, if different from above | |
| Check appropriate box for federal tax classification: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ <input type="checkbox"/> Other (see instructions) ▶ _____ | |
| <input type="checkbox"/> Exempt payee | |
| Address (number, street, and apt. or suite no.) | Requester's name and address (optional) |
| City, state, and ZIP code | |
| List account number(s) here (optional) | |

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

| | | | | | | | | |
|---------------------------------------|--|--|--|---|--|--|---|--|
| Social security number | | | | | | | | |
| | | | | - | | | - | |
| | | | | | | | | |
| Employer identification number | | | | | | | | |
| | | | | - | | | | |
| | | | | | | | | |

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

| | | |
|------------------|----------------------------|--------|
| Sign Here | Signature of U.S. person ▶ | Date ▶ |
|------------------|----------------------------|--------|

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of person who has a business relationship with local governmental entity.

2 ☐ Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name of local government officer with whom filer has employment or business relationship.

Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

☐ Yes ☐ No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

☐ Yes ☐ No

D. Describe each employment or business relationship with the local government officer named in this section.

4

Signature of person doing business with the governmental entity

Date



City of El Paso
ACCOUNTS PAYABLE
DIRECT DEPOSIT SIGN-UP FORM

This form is used to collect important information to enroll, update or change your Direct Deposit request. Please complete and return to the Purchasing & Strategic Sourcing Department; see contact information provided below. For assistance, please call 915-212-1185.

Part I – Vendor / Employee Information

Name of Payee (Print) _____
Federal Taxpayer ID Number or Employee KRONOS ID# _____
Address: _____
City, State, and Zip Code _____
Telephone _____
E-mail (Print) _____

Part II – Direct Deposit Information

Action Requested: ☐ Start Direct Deposit ☐ Stop Direct Deposit ☐ Change Direct Deposit
Name of Financial Institution: _____
Routing Number (must be nine digits): _____
Bank Account Number: _____
Account Type: ☐ Checking ☐ Savings

For convenience, you may attach a voided check.

Do not use a deposit slip as some banking institutions do not display the correct routing number on deposit slips.

Part III – Terms and Conditions

I hereby authorize and request the City of El Paso to initiate credit entries and if necessary, a debit entry in accordance with National Automated Clearing House Association (NACHA) rules reversing a credit entry made in error, to my account at the financial institution named. The electronic payment is to remain in effect until withdrawn by written notification to the City of El Paso. Funds that are sent to a closed bank account are returned by the banking institutions within five (5) business days. Re-issued payments will be made when funds are returned to City of El Paso.

Signature

Date

Purchasing & Strategic Sourcing Department
300 N. Campbell, 1st floor – EL PASO TX 79901
Fax 915-212-0044





ATTACHMENT A

CONTRACT CLAUSES

1. TYPE AND TERM OF CONTRACT

This is a Request for Proposal Contract under which the City shall order all of its supplies and/or services described in Section A from the successful bidder, hereinafter referred to as the Contractor, for the duration of the contract.

In the event the City has not obtained another service contractor by the expiration date of the term contract, the City, at its discretion, may extend the contract on a month-to-month basis not to exceed six (6) months until such time as a new contract is awarded.

The term of this agreement shall be upon negotiated terms commencing on the date the Contractor receives a written notice of award. Delivery of the notice of award shall be by Email or US Postal Service.

2. INVOICES & PAYMENTS

- A. The Contractor will submit invoices, in single copy, on each contract after each delivery. Invoices covering more than one purchase order will not be accepted.
- B. Invoices will be itemized, including serial number of unit; transportation charges, if any, will be listed separately.
- C. Invoices will reflect the Contract Number and the Purchase Order Number.
- D. Do not include Federal Tax, State Tax, or City Tax. The City will furnish a tax exemption certificate upon request.
- E. Discounts will be taken from the date of receipt of goods or date of invoice, whichever is later.
- F. A copy of the bill of lading and the freight waybill when applicable will be attached to the invoice.
- G. Payment will not be due until the above instruments are submitted after delivery and acceptance.
- H. Mail invoices to the City Department indicated in the Invoice Instructions set forth on the Purchase Order.
- I. Contractor shall advise the Comptroller of any changes in its remittance addresses.

3. CONTRACTUAL RELATIONSHIP

Nothing herein will be construed as creating the relationship of employer and employee between the City and the Contractor or between the City and the Contractor's employees. The City will not be subject to any obligations or liabilities of the Contractor or his employees incurred in the performance of the contract unless otherwise herein authorized. The Contractor is an independent Contractor and nothing contained herein will constitute or designate the Contractor or any of his employees as employees of the City. Neither the Contractor nor his employees will be entitled to any of the benefits established for City employees, nor be covered by the City's Workers' Compensation Program.

- 4. INDEMNIFICATION [Rev. 04-15-99] [Rev. 01-04-04]**
Contractor or its insurer will INDEMNIFY, DEFEND AND HOLD the City, its officers, agents and employees, HARMLESS FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO THIS AGREEMENT. Without modifying the conditions of preserving, asserting or enforcing any legal liability against the City as required by the City Charter or any law, the City will promptly forward to Contractor every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. Contractor will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as the Contractor may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. Contractor will pay all judgments finally establishing liability of the City in actions defended by Contractor pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by Contractor, and premiums on any appeal bonds. The City, at its election, will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City will not be responsible for any loss of or damage to the Contractor's property from any cause.

5. GRATUITIES

The City may, by written notice to the Contractor, cancel this contract without liability to Contractor if it is determined by the City that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the City of El Paso with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making or any determinations with respect to the performing of such a contract. In the event this contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

6. WARRANTY-PRICE

- A. The price to be paid by the City will be that contained in the Contractor's bid which the Contractor warrants to be no higher than Seller's current prices on orders by others for products of the kind and specification covered by this contract for similar quantities under similar or like conditions and methods of purchase. In the event Contractor breaches this warranty the prices of the items will be reduced to the Contractor's current prices on orders by others, or in the alternative, the City may cancel this contract without liability to Contractor for breach or Contractor's actual expense.
- B. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the City will have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

7. RIGHT TO ASSURANCE

Whenever one party to this contract in good faith has reason to question the other party's intent to perform, he may demand that the other party give written assurance of his intent to perform. In the event that a demand is made and no assurance is given within five (5) calendar days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

8. TERMINATION [Rev. 06/07/97]

A. Termination for Convenience

The City of El Paso may terminate this contract, in whole or in part, at any time by written notice to the Contractor. The Contractor will be paid its costs, including the contract close out costs, and profit on work performed up to the time of termination. The Contractor will promptly submit its termination claim to the City of El Paso to be paid the Contractor. If the Contractor has any property in its possession belonging to the City of El Paso, the Contractor will account for the same, and dispose of it in the manner the City of El Paso directs.

B. Termination for Default

If the Contractor fails to comply with any provision of the contract the City of El Paso may terminate this contract for default. Termination shall be effected by serving a notice of intent to terminate the contract setting forth the manner in which the Contractor is in default. The Contractor will be given an opportunity to correct the problem within a reasonable time before termination notice is rendered. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. The City shall have the right to immediately terminate the Contract for default if the Contractor violates any local, state, or federal laws, rule or regulations that relate to the performance of this Agreement.

9. ADDITIONAL REMEDIES [New 12/96]

If the City terminates the contract because the Contractor fails to deliver goods as required by the contract, the City shall have all of the remedies available to a buyer pursuant to the *UNIFORM COMMERCIAL CODE* including the right to purchase the goods from another vendor in substitution for those due from the Contractor. The cost to cover shall be the cost of substitute goods determined by informal or formal procurement procedures as required by the Local Government Code. The City may recover the difference between the cost of cover and the contract cost by deducting the same from amounts owed to Contractor for goods delivered prior to termination or any other lawful means.

10. TERMINATION FOR DEFAULT BY CITY [Rev. 06/09/97]

If the City fails to perform any of its duties under this contract, Contractor may deliver a written notice to the Purchasing Manager describing the default, specifying the provisions of the contract under which the Contractor considers the City to be in default and setting forth a date of termination not sooner than 90 days following receipt of the Notice. The Contractor at its sole option may extend the proposed date of termination to a later date. If the City fails to cure such default prior to the proposed date of termination, Contractor may terminate its performance under this Contract as of such date.

11. FORCE MAJEURE [Rev. 06/07/97]

If, by reason of Force Majeure, either party hereto will be rendered unable wholly or in part to carry out its obligations under this Contract then such party will give notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, will be suspended for only thirty (30) days during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party will try to remove or overcome such inability with all reasonable dispatch.

The term Force Majeure as employed herein, will mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemies, orders of any kind of government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, or canals. It is understood and agreed that the settlement of strikes and lockouts will be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure will be remedied with all reasonable dispatch will not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty. If a party is unable to comply with the provisions of this contract by reason of Force Majeure for a period beyond thirty days after the event or cause relied upon, then upon written notice after the thirty (30) days, the affected party shall be excused from further performance under this contract.

12. ASSIGNMENT-DELEGATION

No right or interest in this contract will be assigned or delegation of any obligation made by the Contractor without the written permission of the City. Any attempted assignment or delegation by the Contractor will be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

13. WAIVER

No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

14. INTERPRETATION-PAROL EVIDENCE

This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their contract. No course of prior dealings between the parties and no usage of the trade will be relevant to supplement or explain any term used in this contract. Acceptance or acquiescence in a course of performance rendered under this contract will not be relevant to determine the meaning of this contract even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this contract, the definition contained in the Code is to control.

15. APPLICABLE LAW

The law of the State of Texas will control this contract along with any applicable provisions of Federal law or the City Charter or any ordinance of the City of El Paso.

16. ADVERTISING

Contractor will not advertise or publish, without the City's prior consent, the fact that the City has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

17. AVAILABILITY OF FUNDS

The awarding of this contract is dependent upon the availability of funding. In the event that funds do not become available the contract may be terminated or the scope may be amended. A 30-day written notice will be given to the vendor and there will be no penalty nor removal charges incurred by the City.

18. VENUE

Both parties agree that venue for any litigation arising from this contract will lie in El Paso, El Paso County, Texas.

19. ADDITIONAL REMEDY FOR HEALTH OR SAFETY VIOLATION

If the Purchasing Director determines that Contractor's default constitutes an immediate threat to the health or safety of City employees or members of the public he may give written notice to Contractor of such determination giving Contractor a reasonable opportunity to cure the default which shall be a period of time not less than 24 hours. If the Contractor has not cured the violation within the time stated in the notice, the City shall have the right to terminate the contract immediately and obtain like services as necessary to preserve or protect the public health or safety from another vendor in substitution for those due from the Contractor at a cost determined by reasonable informal procurement procedures. The City may recover the difference between the cost of substitute services and the contract price from Contractor as damages. The City may deduct the damages from Contractor's account for services rendered prior to the Notice of Violation or for services rendered by Contractor pursuant to a different contract or pursue any other lawful means of recovery. The failure of the City to obtain substitute services and charge the Contractor under this clause is not a bar to any other remedy available for default.

20. COMPREHENSIVE GENERAL LIABILITY INSURANCE

For the duration of this contract and any extension hereof, Contractor shall carry in a solvent company authorized to do business in Texas, comprehensive general liability insurance in the following amounts:

\$1,000,000.00 – Per Occurrence
\$1,000,000.00 – General Aggregate
\$1,000,000.00 – Products/Completed Operations-Occurrence & Aggregate

With respect to the above-required insurance, the City of El Paso and its officers and employees shall be named as additional insured as their interests may appear. The City shall be provided with sixty (60) calendar days advance notice, in writing, of any cancellation or material change. The City shall be provided with certificates of insurance evidencing the above required insurance prior to the commencement of this contract and thereafter with certificates evidencing renewal or replacement of said policies of insurance at least fifteen (15) calendar days prior to the expiration or cancellation of any such policies.

Notices and Certificates required by this clause shall be provided to:

City of El Paso
Purchasing & Strategic Sourcing Department
300 N. Campbell, 1st Floor
El Paso, Texas 79901-1153
Attn: Haydee Peña, Purchasing Agent

Please refer to Bid Number/Contract Number and Title in all correspondence.

Failure to submit insurance certification may result in contract cancellation.

21. WORKERS' COMPENSATION

For the duration of this contract and any extension hereof, Contractor shall carry Workers' Compensation and Employers' Liability Insurance in the amount required by Texas law: \$500,000.00. Out-of-state Contractors that provide goods through US mail, UPS, etc. are exempt from this requirement.

22. CONTRACT ADMINISTRATION

The point of contact for the administration of this Contract, on behalf of the City of El Paso, is:

Cary Westin
Economic Development Managing Director
Telephone: (915) 212-1614
Email: WestinCS@elpasotexas.gov

Note any contact with the Contract Administrator prior to award of this contract is a violation of the Cone of Silence (2.3.1 Cone of Silence/Anti Lobbying Policy) and your submission may be subject to disqualification.

Mail correspondence should be addressed to:

City of El Paso
Purchasing & Strategic Sourcing Department
300 N. Campbell, 1st Floor
El Paso, TX 79901-1153
Attn: Haydee Peña, Purchasing Agent

Please refer to Bid Number/Contract Number and Title in all correspondence.

23. COMPLIANCE WITH NON-DISCRIMINATION LAWS

The Contractor agrees that it, its employees, officers, agents, and subcontractors, will comply with all applicable federal and state laws and regulations and local ordinances of the City of El Paso in the performance of this Contract, including, but not limited to, the American with Disabilities Act, the Occupational Safety and Health Act, or any environmental laws.

The Contractor further agrees that it, its employees, officers, agents, and subcontractors will not engage in any employment practices that have the effect of discriminating against employees or prospective employees because of sex, race, religion, age, disability, ethnic background or national origin, or political belief or affiliation of such person, or refuse, deny, or withhold from any person, for any reason directly or indirectly, relating to the race, gender, gender identity, sexual orientation, color, religion, ethnic background or national origin of such person, any of the accommodations, advantages, facilities, or services offered to the general public by place of public accommodation.

24. RIGHT TO AUDIT

The Contractor agrees that the City shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine and copy any directly pertinent books, computer and digital files, documents, papers, and records of the Contractor involving transactions relating to this Contract. Contractor agrees that the City shall have access during normal working hours to all necessary Contractor facilities, and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this section. The City shall give Contractor reasonable advance notice of intended audits. The City will pay Contractor for reasonable costs of any copying the City performs on the Contractor's equipment or requests the Contractor to provide. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

The Contractor agrees that it will include this requirement into any subcontract entered into in connection with this Contract.

25. COOPERATIVE PURCHASING

When stated specifically in the solicitation, the City of El Paso may participate in, sponsor, conduct or administer a cooperative procurement agreement with one or more other public bodies or agencies of the State of Texas for the purpose of combining requirements to increase the efficiency or reduce administrative expenses. The Contractor must deal directly with each participating governmental entity named in the solicitation concerning the placement of orders, issuance of the purchase order, insurance certificates, contractual disputes, invoicing and payment or any other terms or conditions the participating agency may require. The actual utilization of this contract award by the participating governmental entity is at the sole discretion of that participating entity.

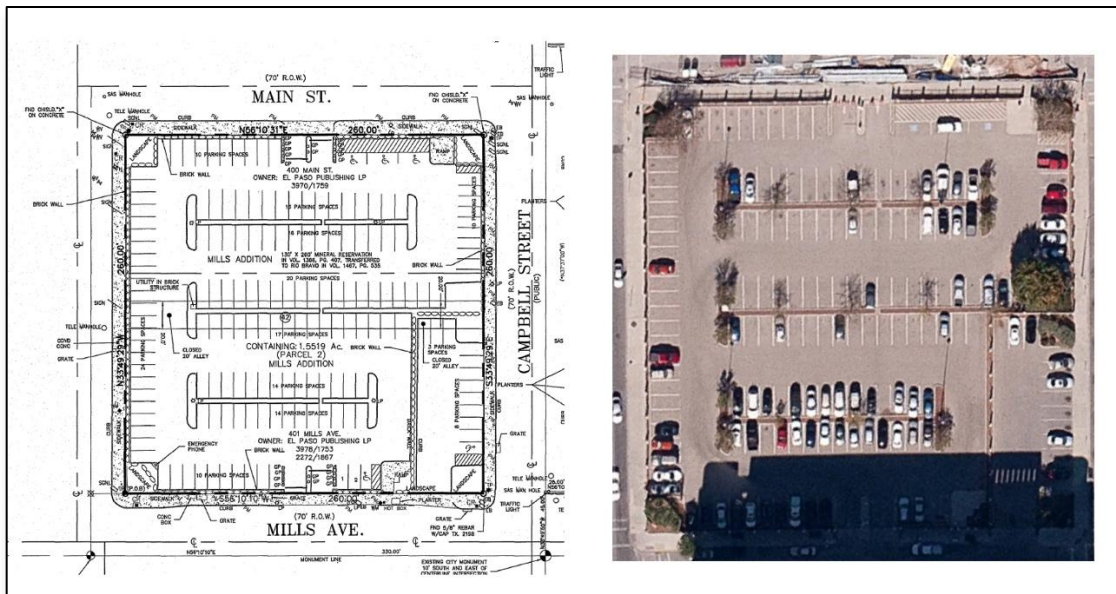
The City of El Paso is acting on behalf of the participating governmental agency for the sole purpose of complying with Texas competitive bidding requirements and shall not be held liable for any costs, damages, etc. incurred by the Contractor with regard to any purchase by the participating agency. The City of El Paso shall be legally responsible only for payment for goods and services in the quantities detailed in the City's own purchase order or contract.

Urban Mixed Used Development Site: “El Paso Times Lot”

Site Description: The development site is located in downtown El Paso, directly across the street from City Hall (“City 1”) at the intersection of Mills Avenue and Campbell Street. It is approximately 67,600 sqft in size (1.55 acres). No buildings are present on the site, and the full block is available for redevelopment.

- Legal Description - PARCEL 1: BEING A PORTION OF LOT 1, BLOCK 1, EL PASO TIMES SUBDIVISION, AN ADDITION TO THE CITY OF EL PASO, EL PASO COUNTY, TEXAS.
PARCEL 2: ALL OF BLOCK 42, INCLUDING A 20' CLOSED ALLEY ANSON MILLS MAP ADDITION AN ADDITION TO THE CITY OF EL PASO, EL PASO COUNTY, TEXAS.
- Current Zoning: C5 and C5c. The site is also located in El Paso's downtown Tax Increment Reinvestment Zone (TIRZ) and may be rezoned by mutual agreement to suit a specific development program.

Project Site Illustration



Proposed Use: Urban format, architecturally significant and unique, multistory, mixed use building, and parking garage.

Proposed Minimum Development Requirements for Public Private Partnership (PPP): The City of El Paso is seeking a development partner for the full downtown block pictured above. A myriad of potential partnership structures and incentive programs are available ranging from fee and property tax waivers to long term low cost leases and development partnerships for projects meeting the minimum criteria described below.

- Urban format building occupying full development site
- 200 units residential (sale or rent)
- 30,000 sqft ground floor retail
- 75 percent retail frontage on ground floor
- 700 parking spaces for City use
- Additional parking to be constructed by developer above City requirements
- Shared parking program (City and developer)
- Other uses that add density or value to the site are strongly encourage

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